

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRIAN GILMER, et al.,

No. C-08-05186 CW (EDL)

Plaintiffs,

**ORDER GRANTING IN PART
PLAINTIFFS' MOTION FOR
PROTECTIVE ORDER AND DENYING
DEFENDANT'S MOTION TO COMPEL**

v.

ALAMEDA-CONTRA COSTA TRANSIT
DISTRICT,

Defendant.

Plaintiffs are five bus drivers employed by Defendant, Alameda-Contra Costa Transit District who allege that they have not been properly compensated for their overtime work by Defendant as required by the Fair Labor Standards Act. The parties stipulated to proceed with this case as an "opt-in" collective action. In addition to the named Plaintiffs, there are 1,355 drivers who have filed "Consents to Become Party Plaintiffs." The discovery at issue in Plaintiffs' Motion for Protective Order and Defendant's Motion to Compel is focused on those 1,355 opt-in Plaintiffs. On January 11, 2011, the Court held a hearing on these related motions. For the reasons stated at the hearing and in this Order, Plaintiffs' Motion for Protective Order is granted in part and denied in part and Defendant's Motion to Compel is denied.


Although the parties's motions sought relief as to numerous discovery requests, at the hearing, the parties confirmed that the crux of their dispute is whether, and to what extent, Defendant is entitled to discovery from Plaintiffs regarding overtime attributable to "split-shift" travel. "Split-shift" travel is incurred when the first part of a driver's split shift ends at a different point than the start point of the second part of the run, requiring the driver to travel from the end point of her first part to the start point of her second part. Plaintiffs first argued that Defendant was not entitled to this discovery because none of the discovery requests specifically called for the

1 amount of time attributable to “split-shift” travel. As stated at the hearing, the discovery requests in
2 general, including interrogatory 3 to the opt-in Plaintiffs, call for this information (as well as
3 considerable additional information that Plaintiffs need not provide because Defendants have the
4 information in their own records). See Monrad Decl. in Support of Pls.’ Mot. for Protective Order
5 Ex. 2 at 4 (“Identify the number of minutes of overtime pay, if any, which you estimate you are
6 entitled to as damages in this action.”).

7 Defendant is entitled to test Plaintiffs’ computation of damages, which they state will be
8 comprised of Defendant’s records as well as information from www.511.org to compensate for the
9 lack of payroll records regarding the “split-shift” travel time. To do that, Defendant needs
10 information from Plaintiffs regarding their “split-shift” travel time, which is not tracked by
11 Defendant. Accordingly, for the reasons stated at the hearing, Defendant may take up to fifty
12 depositions of opt-in Plaintiffs on the issue of “split-shift” travel time. Each deposition shall last no
13 more than two hours, and should be completed in less time if possible. Defendant may designate
14 which Plaintiffs it will depose, but the Court encourages the parties to work together to choose the
15 deponents. Further, after conducting ten depositions, the parties shall meet and confer to determine
16 if the depositions have yielded useful information and whether the depositions should continue. The
17 depositions shall be completed no later than March 1, 2011. This order permitting fifty depositions
18 may be superceded without further court order by the parties’ agreement to conduct this discovery in
19 some alternative manner, such as by stipulation or by a limited, informal survey of the Plaintiffs.

20 On January 3, 2011, Defendant filed an administrative motion seeking to extend the expert
21 disclosure deadline, which was set for January 21, 2011, in light of the parties’ discovery disputes.
22 For the reasons stated at the hearing, Defendant’s administrative motion is granted as follows.
23 Initial expert disclosures shall be made no later than April 1, 2011. Rebuttal expert disclosures, if
24 any, shall be made no later than April 15, 2011. The expert discovery cutoff date shall be April 29,
25 2011. **IT IS SO ORDERED.**

26 Dated: January 13, 2011

27 
28 ELIZABETH D. LAPORTE
United States Magistrate Judge